

JUL 27 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BOBBY V. MOON,

Defendant - Appellant.

No. 08-30348

D.C. No. 4:07-cr-00036-BLW

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted July 14, 2009^{**}

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Bobby V. Moon appeals from the 120-month sentence imposed following his guilty-plea conviction for possession of sexually explicit images of minors, in

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, appellant's request for oral argument is denied.

violation of 18 U.S.C. § 2252(a)(4)(B). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Moon contends that the district court erred by applying a five-level enhancement pursuant to U.S.S.G. § 2G2.2(b)(7)(D) because the evidence was insufficient to find that he possessed 600 or more images. In light of Moon's stipulation to the fact that he possessed 600 or more images, the district court did not err. *See United States v. Ferreboeuf*, 632 F.2d 832, 836 (9th Cir. 1980).

To the extent Moon contends that the district court should have used the clear and convincing evidence standard in determining the number of images, his stipulation to 600 or more images is sufficient to meet this standard of proof. *See id.*

AFFIRMED.